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Flynn Thiel Boutell & Tanis  
2026 Rambling Road  
Kalamazoo MI 49008-1699

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**DEC 15 2008**

In re Application of  
Sunamoto et al.  
Application No. 09/936,953  
Filed: September 17, 2001  
Attorney Docket No. Yanagihara Case  
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**OFFICE OF PETITIONS**

**DECISION ON PETITION**

This is a decision on the petition filed September 26, 2008 to withdraw the holding of abandonment pursuant to 37 CFR 1.181(no fee).

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This above-identified application became abandoned for failure to timely file a proper response after the Board of Patent Appeals and Interferences rendered a decision on October 13, 2006. The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit ( 37 CFR § 1.302) or for commencing a civil action ( 37 CFR §1.303) is two months from the date of the decision of the Board of Patent Appeals and Interferences pursuant to 37 CFR §1.304. Petitioner could have filed an appeal to a Court or a civil action. Petitioner failed to do so. Accordingly, this application became abandoned on December 14, 2006. A Notice of Abandonment was mailed on November 1, 2006.

Petitioner asserts that a reply in the form of an RCE was submitted in response to the Board of Appeals decision on December 13, 2006.

The submission of the petition to withdraw the holding of abandonment is untimely. 37 CFR 1.181(f) provides that, inter alia, except as otherwise provided, any petition not filed within 2 months of the mail date of a notice of abandonment (the action complained of) may be dismissed as untimely. The Notice of Abandonment was mailed on November 1, 2006. A petition was not filed in this application until September 26, 2008 almost two years later. Thus, the petition is untimely.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1620 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail:                      Mail Stop PETITION  
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By facsimile:                (571) 273-8300  
                                    Attn: Office of Petitions

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant  
Petitions Attorney  
Office of Petitions